**HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI**
**AND**
**HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY**

**WRIT APPEAL No. 233 OF 2007**

Between:

K. Srinivasa Rao & others

... Appellants

And

Union of India
Through the Secretary,
Ministry of Environment and Forests,
New Delhi & others

... Respondents

**:: J U D G M E N T ::**

Counsel for the appellants : Shri M.S. Ramachandra Rao

16.03.2007

**Per G.S. Singhvi, CJ**

This appeal is directed against order dated 05.01.2007 passed by the learned Single Judge in Writ Petition No.188 of 2007.

In the writ petition filed by them, the appellants prayed for issue of a mandamus to the respondents to ensure strict compliance of G.O.Ms.No.127, Energy (Power.I) Department, dated 29-9-2006 issued by the Government of Andhra Pradesh; to direct the respondents to ensure supply of not less than 50% of the total fly ash generated by each coal/lignite based power plant to fly ash brick manufacturing SSI units free of cost and without any agent or

middlemen; to direct the respondents to ensure availability of hydra mix facility for at least 50% of the ash collection silos in each coal/lignite based power plant operating in the State of Andhra Pradesh, and also direct the respondents to constitute dispute settlement committee for each thermal power plant with a representative of the local brick manufacturers association.

The learned Single Judge did not issue formal notice to the respondents, but disposed of the writ petition by taking cognizance of the statement made by the counsel representing Andhra Pradesh Power Generation Corporation Limited that there is a shortfall in the lifting of fly ash by various brick manufacturers and, on that account, there is a huge accumulation of fly ash in the fly ash bits and the Corporation has approached the government for necessary modification and that the brick manufacturers will be supplied the necessary quantity of fly ash.

Shri M.S. Ramachandra Rao, learned counsel for the appellants argued that the order under challenge is vitiated by an error of law inasmuch as the learned Single Judge did not even advert to the substantive prayers made in the writ petition in the matter of ensuring availability of hydra mix facility for at least 50% of the ash collection silos in each coal/lignite based thermal power plant operating in the State of Andhra Pradesh and to direct the respondents to constitute dispute settlement committee for each thermal power plant with a representative of the local brick manufacturers association.

In the context of the aforementioned submission of the learned counsel, we enquired from him whether the said prayer was pressed before the learned Single Judge. The reply of the learned counsel is in affirmative. If that be so, the proper remedy available to the appellants is to apply for review of the order under challenge by filing

an application under Article 226 of the Constitution of India read with Order XLVII Rule 1 of the Code of Civil Procedure and not by filing appeal.

With the above observations, the appeal is disposed of leaving the appellants free to seek review of the order under challenge.

Needless to say that if the appellants feel aggrieved by the order which may be passed by the learned Single Judge on the review application, then they shall be entitled to challenge the order which may be passed in the review petition as also the one passed in the main petition.

As a sequel to disposal of the writ petition, W.P.M.P.Nos.439 and 440 of 2007 filed by the appellants for interim relief are disposed of as infructuous.

**G.S. SINGHVI, CJ**

**C.V. NAGARJUNA REDDY, J**

16.03. 2007
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